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In the
SUPREME COURT OF THE UNITED STATES

October Term, 1950 1951

No. 1

GEORGIA RAILROAD & BANKING COMPANY,
Appellant

VS.

CHARLES D. REDWINE, State Revenue Commissioner,
Appellee

Answer of Appellee to Motion to Terminate Continuance

EUGENE COOK,
Attorney General of Georgia

M. H. BLACKSHEAR, JR.,
Deputy Assistant Attorney General
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EDWARD E. DORSEY
of Counsel for Appellee

VICTOR DAVIDSON
Counsel for Amici Curiae

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1950

No. 4

GEORGIA RAILROAD & BANKING COMPANY,

Appellant

VS.

CHARLES D. REDWINE, State Revenue Commissioner,

Appellee

Answer of Appellee to Motion to Terminate Continuance

TO THE HONORABLE THE CHIEF JUSTICE
AND ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:

Appellee, Charles D. Redwine, who is State Revenue Commissioner of Georgia, objects to and opposes appellant's motion to terminate the continuance ordered by this Court on February 20, 1950, and for cause thereof says:

1.

Since entry of the order of continuance the state remedies pointed out have been asserted and the issues presented are in the process of adjudication by the State Courts of Georgia. More specifically, the injunction pending appeal was modified by consent of the parties; the valuation of appellant's properties for each of the years in controversy was determined, (App. p. 7); appellant filed written protest to the tentative

determination by the appellee Revenue Commissioner that the property in question was subject to ad valorem taxation; hearing was had by the Commissioner of Revenue upon this protest, briefs were submitted and, on September 21, 1950, decision was rendered holding the property subject to tax and fixing the amount of tax for each of the years in question and for all of the political subdivisions involved (App. p. 9); appeal from this administrative decision was duly entered to the Superior Court of Richmond County, Georgia, and responsive pleadings have been filed in that court by the appellee. This appeal has been set down for hearing on January 22, 1951.

2.

When this Court by its order of February 20, 1950, in effect directed the appellant to assert its state remedies with all convenient speed it hardly intended the State Courts of Georgia to pass upon issues which had already been foreclosed by its own decision in *Wright v. Georgia Railroad & Banking Co.*, 216 U. S. 420. Appellant is not justified in assuming that the order of continuance was improvidently entered without cognizance and awareness of the binding force of the judgment of the three-judge District Court in *Ga. Railroad and Banking Co. v. Redwine*, 85 F. Supp. 749. There is no reason why the Courts of the State of Georgia are better qualified than this Court to determine whether or not the case is to be ruled by the principle of *res judicata*. The order of continuance should, therefore, be construed as necessarily and intentionally giving to the judgment of the District Court just exactly the scope and meaning which appellant now attributes to it (Appellant's motion, pages 1 and 2).

Appellant insists that there are no unsettled questions of state law necessary to a decision of this case. Appellee has briefed and argued in this Court matters which rest wholly upon state law, including interpretation of certain provisions of the several Constitutions of the State of Georgia. Responsive pleading in the case now pending in the Superior Court of Richmond County, Georgia, on appeal from the decision of the State Revenue Commissioner raise like issues (Appendix p. 17 et seq). An examination of this ground of the motion discloses that appellant makes no claim that issues depending upon state law have not been raised, but rather contends that they have been "settled." It is insisted that the decision of the Supreme Court of Georgia in *State of Georgia v. Georgia Railroad & Banking Co.*, 54 Ga. 423 "settles" the questions of validity and construction of its charter as a contract of exemption. It is a matter of state law to determine just how far that decision "settles" these issues. Appellee intends to insist in the State Court that as a matter of state law an adjudication as to liability to taxation for one year is not res judicata upon an identical issue for a subsequent year. In *Wright v. Georgia Railroad & Banking Co.*, 216 U. S. 420, this Court referred to and followed this principle of state law. Appellee also contends that the opinion in *State of Georgia v. Georgia Railroad & Banking Company*, 54 Ga. 423, went beyond the issues there before the court. For example, the Supreme Court of Georgia there expressed the view that the legislature of Georgia in 1833 had constitutional authority to enter into a contract granting perpetual tax exemption. The record before that court, which has been included in full in the record in the case at bar, clearly shows that

no issue had been made with respect to the constitutional authority of the Georgia Legislature so to contract. It is therefore open to the Courts of the State of Georgia not only to determine that this issue is not settled but that the decision in question is not precedent or authority for decision of this question.

4.

Appellant has heretofore argued and now continues to insist that the remedy being pursued in the State Court will not afford it an efficient and speedy adjudication of the merits of the controversy. It expresses the fear that the appeal will be dismissed by the State Court on its own motion. If the appeal is dismissed for want of jurisdiction such dismissal will certainly be by the State Court upon its own motion as appellee has not questioned jurisdiction and has stated through counsel at the bar of this court that the remedy is appropriate and available and that jurisdiction exists. In brief previously filed by appellee at pages 33, 34, 35 and 36 we have endeavored to show that the appellant's fear of dismissal is without substance. We reiterate this argument upon this ground of the motion.

From 1937 to 1943 there was clearly a right to administrative determination of this question of taxability by the Georgia Board of Tax Appeals. (Appellee's brief, Appendix, pp. 64-65.) By Act of February 17, 1943, the Board of Tax Appeals was abolished and the State Revenue Commissioner required to decide all questions previously determined by the Board of Tax Appeals. (Appellee's brief, Appendix p. 66.) By section 19 of that same act provision was made for arbitration of valuations assessed by the Revenue Commissioner on certain tax returns including those of appellant. Admittedly, arbitrators should not concern

themselves with passing upon the question of taxability. *Columbus Mutual Life Insurance Co. v. Gullat*, 189 Ga. 747. When this section 19 is construed as a whole it is clear that the only exception which the legislature sought to make in the procedure for review of tax questions is that having to do with valuation of property for which it provides an alternative procedure.

5.

Appellant's unsuccessful effort to obtain a declaratory judgment in *Musgrove v. Georgia Railroad & Banking Co.*, 204 Ga. 139, furnishes no reason for terminating the continuance. The refusal of the Supreme Court of Georgia in that case to point out the correct remedy was entirely proper.

The delay in obtaining a final adjudication of the issues has, in the main, resulted from appellant's efforts extending from October 15, 1945, to February 20, 1950, to secure a declaration of rights as against the State of Georgia, without the consent of that State, and in a manner which would extend largely beyond the tax claims then in controversy. Even apart from the fact that the delay is largely chargeable to appellant, there has been no injury to it, irreparable or otherwise, resulting from this lapse of time. Should the railroad be found ultimately liable to taxation the principal amount of its tax liability would be the same whenever the decision should be made. Interest is but compensation for the use of these tax funds pending litigation. Should the ultimate decision be in favor of the appellant, then there will most certainly be no injury resulting from the delay incident to litigation.

CONCLUSION

Wherefore, appellee urges that motion to terminate the continuance and decide the appeal be denied and that the State Courts of Georgia be allowed to pass upon the issues there pending.

Respectfully submitted,

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Atlanta, Georgia

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Of Counsel
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Irwinton, Georgia

VICTOR DAVIDSON
Counsel for Amici Curiae

GEORGIA, Fulton County

In person appeared before the undersigned officer authorized to administer oaths, M. H. BLACKSHEAR, JR., who, being sworn on oath says that he is of counsel for appellee in the above case and has personal knowledge of the facts stated in the foregoing answer to motion to terminate the continuance and decide the appeal, and that the facts set out in such answer are true.

M. H. BLACKSHEAR, JR.

Sworn to and subscribed before me
this 28th day of December, 1950

BETTY BALCOM

Notary Public

APPENDIX

DEPARTMENT OF REVENUE

State of Georgia

Atlanta

May 26, 1950

Mr. Sherman Drawdy, President
Georgia Railroad and Banking Company
Augusta, Georgia

Dear Sir:

Re: State, County and Local Ad Valorem
Taxes, Georgia Railroad and Banking
Company, for 1939 through 1950

At the request of this department, you have heretofore filed ad valorem tax returns covering the real and personal property and franchise included in those returns identified as Main Line and Athens Branch of the Georgia Railroad and Banking Company for each of the years 1939 through 1950, inclusive. We understand the position uniformly taken by the Railroad Company as to each of these years that this property was not subject to ad valorem taxation, but instead was subject to taxation upon the net returns on your capital stock at the rate of one-half of one per cent.

This is to inform you that this department does now, and hereby, take the following actions with respect to ad valorem taxation for the years in question:

1. The valuations set forth by you in your returns for each of the years in question are acceptable as follows:

Aggregate value of this property as identified above for the year—

1939	\$2,845,661
1940	2,928,446
1941	3,015,765
1942	3,141,313
1943	3,267,202
1944	3,444,179
1945	3,554,163
1946	3,616,971
1947	3,629,019
1948	3,624,861
1949	3,673,601
1950	3,891,563

2. All of the property included in the returns making up the valuations set out in Paragraph One is determined to be subject to State, County, Municipal and School District taxation at the same rate of taxation as all other property similarly located for each of the years in question.
3. That liability for ad valorem taxes, as above set out, does relieve the company of liability for taxation for the years in question at the rate of one-half of one per cent of net earnings, and that appropriate adjustments for amounts heretofore paid by the company in lieu of ad valorem taxes be made.

The foregoing determination as to valuation and taxability shall become final unless written protest is

filed with the Commissioner within thirty days after the giving of this notice.

Yours very truly,

CHARLES D. REDWINE, COMMISSIONER

By W. Harvey Atkinson, Director
Property & License Tax Unit

WHA:MHB:rm

cc Hon. Eugene Cook, Attorney General

cc Mr. Victor Davidson

cc Mr. Furman Smith, C/o Smith, Kilpatrick, Cody,
Rogers & McClatchey

IN RE: ASSESSMENT OR LEVY OF TAXES
AGAINST GEORGIA RAILROAD AND BANK-
ING COMPANY FOR THE YEARS 1939
THROUGH 1949.

The protest of Georgia Railroad and Banking Company, hereinafter called "Taxpayer," to the finding of the State Revenue Commissioner, dated May 26, 1950, in which the Commissioner found said company liable for State, County, Municipal, and School District taxation as all other property similarly located for each of the years in question, came on for a hearing on July 12, 1950. Upon request for a fuller statement by the Commissioner, counsel for taxpayer made the following stipulation which is to be incorporated in the protest:

1.

That the branch of the railroad running from the main line to Eatonton, as provided by the Acts of 1833 and 1835, was never built.

That the branch of the railroad, as provided by the Act of 1833, running from Athens to some point on the Tennessee River, or as provided by the Act of 1835 to connect to the Cincinnati road, was never built.

After considering the argument and brief filed, it is hereby ordered as follows:

It appearing that an injunction was granted on October 15, 1945, to the said taxpayer against the then State Revenue Commissioner, and his successors in office, enjoining him from assessing or levying any ad valorem taxes against taxpayer on what is known as the main line running from Atlanta to Augusta and the Athens branch running from Union Point to the City of Athens, Georgia, and also a petition for a second injunction filed in the Federal Court on February 14, 1949, upon which an injunction pending the appeal was granted taxpayer on October 3, 1949, has tolled the seven year statute of limitations so that the taxes should be levied from 1939 to 1949, inclusive. The taxes due the State, the Counties, Municipalities and School Districts, through which said railroad runs, are hereby levied upon the tax returns filed by said taxpayer according to the levies of taxes made by the various taxing subdivisions for the particular years, all as set forth in the schedule hereto attached.

Dated this 21st day of September, 1950.

CHARLES D. REDWINE
State Revenue Commissioner

GEORGIA RAILROAD AND BANKING COMPANY — MAIN LINE AND ATHENS BRANCH

COUNTY	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	TOTALS
Fulton	5,837.39	6,008.87	6,235.02	6,545.79	6,834.44	7,307.90	7,600.59	10,433.80	12,278.37	12,277.90	12,467.31	93,827.38
DeKalb	4,404.81	4,829.87	4,986.60	5,200.20	5,399.28	6,115.94	6,204.99	7,845.48	7,929.46	8,968.82	9,093.22	70,978.67
Rockdale	1,550.89	1,588.06	1,637.78	1,653.81	1,703.47	1,803.84	1,919.95	1,944.85	1,955.77	1,955.31	2,566.61	20,280.34
Newton	1,570.91	1,609.82	1,658.62	1,711.78	1,776.78	1,855.82	1,909.87	1,934.64	1,940.37	1,918.59	2,919.12	20,806.32
Walton	1,821.14	2,009.97	2,180.49	2,252.21	1,914.43	2,222.96	2,312.78	3,193.95	3,194.03	3,574.11	3,625.29	28,301.36
Morgan	3,814.68	3,906.53	4,019.00	4,144.35	4,315.37	4,536.81	4,683.57	4,749.63	4,752.93	6,335.70	6,426.46	51,685.03
Greene, Main Line	2,600.47	2,693.46	2,775.02	2,863.00	3,462.91	3,675.24	3,804.42	3,858.78	3,860.79	3,859.87	4,754.10	38,208.00
Greene, Athens Br.	603.35	616.38	635.64	652.76	758.70	704.13	811.50	822.05	823.21	823.00	1,007.93	8,338.63
Oglethorpe	2,385.24	2,436.08	2,488.31	2,576.96	2,676.68	2,814.90	2,896.52	2,936.15	2,938.34	2,937.62	2,979.71	30,066.51
Clarke	1,074.19	1,139.02	1,193.80	1,144.76	1,089.62	7,139.18	1,168.71	1,399.11	1,615.25	1,717.22	1,741.82	14,422.68
Taliaferro	1,488.44	1,524.20	1,306.23	1,344.89	1,396.91	1,469.77	1,513.12	1,532.74	1,686.06	1,686.82	1,710.98	16,660.16
Warren	2,417.86	2,986.40	3,077.28	3,162.21	3,334.70	3,545.53	3,128.12	2,674.30	2,707.04	2,710.64	3,436.84	33,180.92
McDuffie	2,626.88	2,693.46	2,752.77	2,842.58	2,952.59	3,111.02	3,199.56	3,241.04	3,276.80	3,939.52	3,995.30	34,631.52
Columbia	1,148.54	1,176.03	1,204.52	1,431.29	1,806.94	1,911.16	1,962.23	1,988.10	1,989.85	1,991.06	2,524.49	19,134.21
Richmond	3,327.12	3,407.99	3,484.98	3,736.44	3,878.33	4,017.71	4,160.06	4,254.90	4,011.97	3,979.01	4,716.20	42,974.71
TOTALS	36,671.91	38,626.14	39,636.06	41,263.03	43,301.15	46,311.91	47,275.99	52,809.46	54,960.24	58,675.19	63,965.38	523,496.46
STATE TAX	14,228.31	14,642.23	15,078.83	15,706.57	16,336.01	17,220.90	17,770.82	18,084.86	18,145.10	18,124.31	18,368.01	183,705.95

GEORGIA RAILROAD AND BANKING COMPANY — MAIN LINE AND ATHENS BRANCH

COUNTY WIDE	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1948	TOTALS
Fulton												
DeKalb	1,222.89	1,251.74	1,293.03	1,349.27	1,400.94	1,488.77	1,508.98	3,814.26	4,872.07	4,832.11	4,898.53	27,932.59
Rockdale	456.15	467.08	481.70	486.42	501.02	530.54	1,411.73	1,716.05	1,725.68	2,070.32	2,099.95	11,946.64
Newton	813.15	833.35	859.64	889.24	923.81	965.07	991.72	3,143.79	4,608.37	4,556.66	4,621.94	23,206.74
Walton	244.08	251.68	260.38	269.00	279.46	292.69	902.04	913.73	913.76	913.53	926.61	6,166.96
Morgan	1,097.32	1,123.72	1,155.69	1,190.23	1,238.50	1,303.04	3,221.99	4,079.72	6,654.10	6,652.49	6,747.78	34,464.58
Greene—Main Line	916.14	947.96	976.48	1,001.70	1,046.91	1,113.28	1,150.57	3,496.49	3,501.87	3,501.03	3,551.18	21,203.61
Greene—Athens Br.	251.40	256.83	264.85	271.99	270.97	280.05	289.82	880.77	882.02	881.79	889.35	5,419.84
Oglethorpe	795.08	812.03	829.44	858.99	892.23	938.30	965.50	1,957.43	1,958.89	2,937.62	2,979.71	15,925.22
Clarke	159.53	162.97	167.71	173.56	180.28	189.80	199.81	395.39	474.48	590.48	598.95	3,292.96
Taliaferro	620.19	635.09	653.12	672.45	698.46	734.89	756.56	1,226.19	1,532.78	1,686.82	2,333.16	11,549.71
Warren	1,007.44	1,066.57	1,099.03	1,129.36	1,190.96	1,266.26	1,303.39	2,674.30	2,707.04	2,710.64	4,124.21	20,279.20
McDuffie	875.63	897.82	917.59	947.53	984.20	1,037.01	1,066.52	2,160.69	2,184.53	3,282.93	3,329.42	17,683.87
Columbia	638.00	653.35	669.18	715.65	752.89	796.32	2,452.79	2,485.13	2,487.32	2,488.83	2,524.49	16,664.03
Richmond	5,175.52	5,301.32	5,415.28	5,812.24	6,032.95	6,249.97	7,857.89	8,037.04	8,023.95	7,958.02	10,847.26	76,711.44
TOTALS	14,272.60	14,661.51	15,043.12	15,767.63	16,393.58	17,185.99	24,079.31	36,980.98	42,526.86	45,063.27	50,472.54	292,447.39

GEORGIA RAILROAD AND BANKING COMPANY — MAIN LINE AND ATHENS BRANCH

CITIES	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	TOTALS
Atlanta -----	6,885.57	7,083.60	7,342.90	7,695.12	8,030.56	8,575.33	8,910.13	7,585.89	9,173.02	9,172.51	9,313.12	89,767.75
Decatur -----	432.93	442.64	458.57	484.01	485.50	535.92	537.59	635.30	689.80	684.89	694.70	6,081.85
Clarkston -----	48.48	82.26	85.43	91.22	94.50	100.93	100.61	135.89	111.75	50.12	50.84	952.03
Stone Mountain -----	324.87	332.00	345.71	373.31	387.35	419.00	411.33	416.67	416.69	416.04	415.52	4,259.49
Lithonia -----	303.05	310.04	325.09	352.82	365.94	398.29	387.26	386.16	593.10	592.95	599.82	4,614.52
Conyers -----	464.72	502.47	522.98	504.66	508.23	548.07	632.66	607.14	584.27	584.15	592.52	6,051.87
Covington -----	531.31	544.29	557.55	568.95	588.04	609.41	636.16	337.55	337.56	409.06	414.93	5,534.81
Social Circle -----	575.54	589.90	752.59	777.18	807.47	841.78	888.05	9.00.70	900.72	1,125.64	1,141.76	9,301.33
Rutledge -----	186.95	191.43	197.00	204.10	213.11	202.25	310.37	314.39	314.40	314.32	318.83	2,863.21
Madison -----	522.72	535.38	551.94	573.66	599.87	836.94	874.78	893.22	893.24	669.77	905.80	7,857.32
Greensboro -----	502.19	522.95	539.36	555.83	569.54	597.92	624.45	637.86	634.70	634.55	643.62	6,462.97
Union Point, Main L. -----	410.23	216.94	223.76	231.17	232.44	251.03	394.43	399.54	532.73	532.59	540.23	3,965.09
Union Point, Ath. Br. -----	94.07	48.87	49.92	51.60	53.23	56.21	86.80	87.92	117.24	117.20	118.88	881.94
Crawfordville -----	154.49	158.28	163.27	169.03	175.61	183.66	189.59	182.06	230.46	230.40	233.70	2,080.55
Norwood -----	107.95	-----	118.62	121.87	128.07	136.02	139.83	141.64	141.65	212.43	215.48	1,463.56
Camak, Main Line -----	302.50	347.61	361.50	370.26	396.37	431.08	441.96	490.50	517.85	517.73	525.14	4,702.50
Thomson -----	259.60	269.46	270.74	274.47	349.25	371.58	324.25	358.32	468.15	472.83	479.60	3,907.35
Harlem -----	181.94	186.31	191.72	197.97	221.51	239.02	293.94	297.32	297.32	297.25	301.51	2,705.63
Augusta -----	5,141.18	5,926.07	5,777.31	6,156.02	6,388.01	6,259.28	6,498.74	7,007.57	7,006.27	6,995.63	10,760.83	73,916.91
Crawford, Athens Br. -----	244.71	250.40	253.13	262.87	273.37	285.89	294.16	297.95	297.95	297.88	302.15	3,060.46
Athens, Athens Br. -----	862.31	935.41	9990.93	1,092.33	1,134.00	1,180.85	1,209.83	1,225.53	1,226.57	1,223.30	1,240.81	12,321.87
	18,537.31	19,475.31	20,031.08	21,118.27	22,001.97	23,156.56	24,186.92	23,349.12	25,485.44	25,551.24	29,809.79	252,753.01

SCHOOL DISTRICT	COUNTY	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	TOTALS
Avondale	DeKalb	233.57	239.12	329.49	342.88	355.54	271.72	289.03	39.04	44.05	93.18	47.62	2,285.24
Clarkston	DeKalb	347.02	355.29	365.42	376.56	391.11	406.96	424.03	58.57	73.27	109.77	74.23	2,982.24
Stone Mtn.	DeKalb	549.36	462.83	773.93	800.93	831.60	868.50	901.30	266.32	152.19	304.16	230.09	6,241.30
Redan	DeKalb	228.78	234.39	337.76	348.03	309.86	326.21	335.91	170.13	28.36	141.74	115.02	2,576.19
Lithonia	DeKalb	344.30	352.02	364.60	380.76	395.21	293.65	856.58	385.03	261.50	261.53	176.63	4,171.90
Totals		1,703.04	1,743.65	2,171.20	2,249.16	2,283.32	2,267.04	2,806.94	919.09	559.46	910.38	643.59	18,256.87
None	Rockdale												
None	Newton												
None	Walton												
Rutledge	Morgan	325.61	333.42	342.86	353.16	367.54	387.08	79.04	80.97	80.97	80.95	82.11	2,514.61
Buckhead	Morgan	1,306.70	926.50	1,271.00	1,418.26	1,475.92	1,552.32	246.15	249.34	243.33	249.29		8,944.83
Totals		1,632.31	1,259.92	1,613.86	1,771.42	1,843.46	1,939.40	326.09	830.31	330.32	330.24	82.11	11,459.44
Main Line													
Meadow Crest	Greene	175.55	180.69	187.37	192.33	199.59	209.58	216.21					1,361.32
Siloam	Greene	662.19	685.84	105.19	726.51	752.41	798.41	413.01					4,743.55
Union Point	Greene	643.15	668.82	883.57	912.68	946.36	1,014.26	1,052.51	236.92	237.50	237.44	240.84	7,074.05
Totals		1,480.89	1,535.35	1,776.12	1,831.52	1,898.36	2,022.25	1,681.73	236.92	237.50	237.44	240.84	13,178.92
None	Taliaferro												
Barnett	Warren	341.27	476.75	378.35	636.55	666.17	139.50	143.42					2,772.01
Norwood	Warren	216.81	222.96	229.28	236.20	245.70	258.59	266.02					1,675.56
Camak	Warren	493.19	521.72	449.97	462.70	486.35	517.87	531.79	537.80	554.15	554.02	561.95	5,671.51
Totals		1,051.27	1,221.43	1,047.60	1,335.45	1,398.22	915.96	941.23	537.80	554.15	554.02	561.95	10,119.08
Thomson	McDuffie	1,262.91	1,294.68	1,327.78	1,230.93	1,278.55	1,349.98	1,389.21	812.72	317.49	318.33	322.82	10,405.40
Dearing	McDuffie	465.42	477.24	489.03	503.04	522.53	552.22	566.67	514.80	114.81	114.78	116.42	3,036.96
Totals		1,728.33	1,771.92	1,816.81	1,733.97	1,801.08	1,902.20	1,955.88	427.52	432.30	433.11	439.24	14,442.36
Harlem	Columbia	220.41	225.69	385.42	409.64	430.18	455.42	187.11	94.73	94.88	95.00	296.35	2,694.83
Grovetown	Columbia	270.73	277.21	283.77	304.81	321.41	340.90						1,798.83
None	Richmond	491.14	502.90	669.19	714.45	751.59	796.32	187.11	94.73	94.88	95.00	96.25	4,493.66

GEORGIA RAILROAD AND BANKING COMPANY — MAIN LINE AND ATHENS BRANCH

SCHOOL DISTRICTS—Continued

SCHOOL DISTRICT	COUNTY	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	TOTALS
Athens Branch													
Union Point	Greene	125.54	128.19	170.69	175.98	183.97	193.01	199.42	44.89	44.89	44.88	45.52	1,356.78
Woodville	Greene	382.15	390.48	401.38	396.06	391.82	411.17	425.53	261.45	252.03	251.97	72.35	3,636.39
		507.69	518.67	572.07	572.04	575.79	604.18	624.95	306.34	296.92	296.85	117.87	4,993.37
Maxeys	Oglethorpe	346.70	354.13	362.18	374.38	388.82	410.00	421.54	-----	-----	-----	-----	2,657.81
Crawford	Oglethorpe	495.65	506.44	517.03	539.18	560.17	589.94	607.11	307.78	307.77	-----	-----	4,431.07
Arnoldsville	Oglethorpe	299.14	305.34	312.85	323.65	326.14	354.19	364.44	-----	-----	-----	-----	2,295.75
Winterville	Oglethorpe	47.40	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	47.40
Totals	-----	1,188.95	1,165.91	1,192.06	1,237.21	1,285.13	1,354.13	1,393.09	307.78	307.77	-----	-----	9,432.03
None	Clarke												
TOTALS													
		9,783.62	9,719.75	10,858.91	11,445.22	11,836.95	11,801.48	9,917.02	3,160.49	2,813.30	2,857.04	2,181.95	86,375.73

**GEORGIA RAILROAD AND BANKING
COMPANY
MAIN LINE AND ATHENS BRANCH**

TAXES DUE 1939-1949, Inclusive

STATE	\$183,705.95
COUNTY	523,496.46
COUNTY WIDE	292,447.39
CITIES	252,753.01
SCHOOL DISTRICTS	86,375.73

1,338,778.54

**GEORGIA RAILROAD AND BANKING
COMPANY**

STATE TAXES INCOME $\frac{1}{2}$ of 1%

Net Earnings

1939	1938	3,799.93
1940	1939	4,704.68
1941	1940	5,008.08
1942	1941	8,700.91
1943	1942	19,990.18
1944	1943	20,234.09
1945	1944	17,140.62
1946	1945	8,057.19
1947	1946	2,829.12
1948	1947	6,149.68
1949	1948	9,321.29
		<hr/>
		105,935.77
1950	1949	7,382.47
		<hr/>

113,318.24

NO.

IN THE SUPERIOR COURT OF
RICHMOND COUNTY, GEORGIA

CHARLES D. REDWINE, as State Revenue
Commissioner, Appellee,

VS.

GEORGIA RAILROAD AND BANKING
COMPANY, Appellant

On appeal from the assessment and levy of
ad valorem taxes and denial of protest.

NOW COMES CHARLES D. REDWINE, as State Revenue Commissioner, herein referred to as Appellee, and brings this his general and special demurrers to the protest of Appellant and the allegations set forth herein.

GENERAL DEMURRER

Appellee demurs generally to the said protest and the allegations set forth therein and says:

1.

That the allegations set forth in said protest constitute no legal defense to the assessment and levy of taxes against appellant.

2.

The appellant in its protest bases its claim of exemption to the taxes assessed and levied upon Section 15 of the Act of the Legislature of 1833, and appellee says that said Section is unconstitutional and the pro-

test should be dismissed and the prayers therein denied, for the following reasons, to-wit:

(a) The portion of Section 15 of the Act of 1833 relied on by appellant is repugnant to and in conflict with the Constitution of the State of Georgia of 1798, which Constitution was in force at the time of said Act, because the General Assembly of Georgia at that time had no power to grant perpetual tax exemption to any person, or to bind all future legislatures from changing any law enacted, and contract away the sovereign power of taxation of the State of Georgia so that the people of Georgia could never recover this sovereign power.

(b) The said portion of Section XV is in conflict with Section XXII, Article I of the Constitution of 1798, which reads as follows:

"The General Assembly shall have power to make all laws and ordinances which they shall deem necessary and proper for the good of the State which shall not be repugnant to this Constitution."

because this provision of the Constitution limits the General Assembly to the passage of those laws which are not repugnant to this Constitution, either according to the letter or according to the spirit. An alienation of the sovereign power of the State is repugnant to the sovereign rights of the people of Georgia which was retained by the Constitution.

(c) Said Section of the Act is further repugnant to said Section of the Constitution because said section, if held valid, would forbid all future legislatures from enacting any law under the provisions of said section of the Constitution withdrawing the grant

of said element of sovereignty over a part of the territory of Georgia because under said provision of the Constitution the General Assembly of any year had power to enact any law coming under the provisions of said Section of the Constitution, unhampered by what a preceding legislature had done, and the legislature was not forbidden the right to levy tax on all property within its jurisdiction.

(d) The said portion of Section XV is further repugnant to the Constitution of 1798 and in conflict with Section XXIII of Article I, which limits the authority of the General Assembly and declares the rights of the people in the following words:

"... and this convention composed of the immediate representatives of the people chosen by them to assert their rights, and to revise the powers given by them to the government, and from whose will all ruling authority of right flows, doth assert and declare the boundaries of this State to be as follows... (giving the boundaries of Georgia). Including and comprehending all the lands and waters within the said limits, boundaries and jurisdictional rights."

for the reason that:

(1) Said portion of Section XV is an alienation of the sovereignty of the State over said Georgia Railroad Company:

(2) Said portion of Section XV is an attempt by one legislative body to preempt the right and prerogatives of succeeding legislatures; and

(3) Said quoted portion of the Constitution reserved to the people of the State the jurisdictional rights, including the right to tax, over the Georgia

Railroad Company, and said Section XV was and is in violation of said jurisdictional rights.

This exemption provision, set out in Section XV of the Act of 1833, is especially repugnant to the following portion of said Section XXIII of Article I of the Constitution of 1798:

"And this convention doth further declare and assert, that all the territory without the present temporary line and within the limits aforesaid, is now of right the property of the free citizens of the State, and held by them in sovereignty, inalienable but by their consent."

because this alienation of an essential element of sovereignty is in direct conflict with this provision of the Constitution because only the free citizens of Georgia had the power to alienate this portion of the sovereignty of the State, and the legislature had no power to bind the free citizens of Georgia to such a contract of alienation of sovereign powers.

(e) The granting of this portion of the sovereignty of the State of Georgia by the legislature is further prohibited by said Section XXIII of said Article wherein, after authorizing the legislature to convey to the United States government the western territory of the State, the legislature is authorized as follows:

"... and may procure an extension of settlement, and an extinguishment of Indian claims in and to the vacant territory of this State, to the east and north of the said river Chattahoochee, to which territory such power of contract or sale by the legislature, shall not extend."

This alleged grant of the element of sovereignty to

said Georgia Railroad Company was over territory to which the power of the legislature to contract did not extend, and was indeed forbidden.

(f) The caption of said Act of 1833 reads as follows:

"An Act to incorporate the Georgia Rail Road Company, with powers to construct a Rail or Turnpike Road from the city of Augusta, with branches extending to the town of Eatonton, Madison, in Morgan County, and Athens, to be carried beyond those places, at the discretion of said company, to punish those who may wilfully injure the same, to confer all corporate powers necessary to effect said object, and to repeal an act entitled 'An Act to authorize the formation of a company for constructing a Rail Road or Turnpike from the city of Augusta to Eatonton, and thence westward to the Chattahoochee River, with branches thereto, and to punish those who may injure the same'."

The granting of the portion of the sovereignty of the State of Georgia to said corporation, as set out, is a matter different from what is expressed in the title and by reason of same is repugnant to Section XVII, Article I of the Constitution of 1798 which forbids the General Assembly to enact such Acts, to-wit:

"nor shall any law or ordinance pass containing any matter different from what is expressed in the title thereof."

Not merely is it repugnant to the letter of the Constitution, as set out above, but it is repugnant to the spirit of the Constitution of 1798 in that the provision

is hidden in the main body of the Act at the end of the Fifteenth Section where the average legislator would not be expecting to find such a provision, and by so being placed and not referred to in the title contravenes the very purpose for which the Constitution of 1798 was created, to-wit: the prevention of another infamous Yazoo Fraud, which had once been enacted by the General Assembly of Georgia by means of concealment in the body of an Act, matter to which reference was not made in the title; that underlying the spirit of the Constitution, the moving factor which caused the insertion of Section XVII of Article I in the Constitution of 1798 was the desire of the Constitution-makers to prevent surreptitious legislation, of which the title to an Act gave no notice.

3.

Appellee says further, that said protest should be dismissed because Section 23 of Article I of the Constitution of 1798 as set forth in the extracts above retained to the people of the State all the powers of sovereignty over its territory, and by reason of said retention, reserved to the people the power to adopt constitutions which would revoke any law that the legislature might pass which would attempt to alienate the State's sovereign power, and in both the Constitution of 1877 and that of 1945, the people of Georgia as authorized by the 14th Amendment to the Federal Constitution which forbids any State to deny any person the equal protection of the laws, adopted a Constitution which would give all persons the equal protection of the law relating to ad valorem taxes, and voided any laws which the legislature had heretofore made attempting to alienate the sovereign power of taxation, and the portion of said Section 15 of the

Act of 1833 is in conflict with the Constitution of 1877 and of 1945. It is in conflict with Paragraph I, Section I, Article 4 of the Constitution of 1877, which reads as follows:

"Taxation, a sovereign right. The right of taxation is a sovereign right—inalienable, indestructible—is the life of the State, and rightfully belongs to the people in all Republican governments, and neither the General, nor any, nor all other departments of the Government established by this Constitution, shall ever have the authority to irrevocably give, grant, limit, or restrain this right; and all laws, grants, contracts and all other acts, whatsoever by said government, or any department thereof to effect any of these purposes, shall be and are hereby, declared to be null and void for every purpose whatsoever; and said right of taxation shall always be under the complete control of, and revocable by, the State, notwithstanding any gift, grant, or contract, whatsoever, by the General Assembly."

It conflicts with Article I, Paragraph 3, Section 3 of the Constitution of Georgia of 1945, which reads as follows:

"Revocation of tax exemptions. All exemptions from taxation heretofore granted in corporate charters are declared to be henceforth null and void."

4.

The said section is also in conflict with the Fourteenth Amendment to the Constitution of the United States, which provides:

"... nor shall any State ... deny any person

within its jurisdiction the equal protection of the law."

This section provides special benefits to the appellant, and denies to all the other property owners of the State the equal protection of the laws which require all property owners to bear their equal share of the burdens of government, in that all property owners in the counties, school districts, municipalities along the entire right-of-way of said railroad, are forced to bear more than their fair share of expenses of government, including the cost of protection of the property of appellant, expenses of court in which it litigates, the cost of schools and other improvements, all of which equal protection of the law was attempted to be provided by the vote of the people of Georgia in the Constitution of 1945, in which all tax exemptions were revoked.

5.

Appellee further says that the construction placed on said Section 15 by the courts, as set forth in Paragraphs 4 and 5 of the protest, are likewise in conflict with the same Constitutions, in the same manner and for the same reasons as set forth in the preceding paragraph of this demurrer.

6.

The General Assembly in enacting the Act creating the appellant did not intend in said act to grant perpetual tax exemption on all the property which the corporation should have then or possess later, but the wording of the act shows that it intended merely to grant tax exemption on the shares of stock in the hands of the stockholders.

The protest with the amendment stipulated by the appellant as set forth in the final finding of the appellee shows that even though the Act of 1833 and the amending Act of 1835 which created the appellant should constitute a contract whereby appellant agreed to construct the railroads set forth in said acts, and as a consideration therefor should receive tax exemption forever, the appellant has failed to construct said railroads and hence the appellant has violated its material obligations under said contract and now has no right to any exemption until and unless it builds the roads specified in the Acts of 1833 and 1835.

SPECIAL DEMURRERS

Appellee demurs specially to said petition and its parts and for grounds of said special demurrer says:

1.

Appellee demurs specially to paragraph 3 of the protest and says that said paragraph should be stricken because said section of the Constitution of Georgia of 1945 is not in conflict with the sections of the Constitution of the United States as set forth therein, and would not impair the obligation of any contract protected by same and neither would it deprive any taxpayer of property without due process of law for the following reasons:

(a) The protest, as amended by the stipulations set forth in the final finding of appellee, admits that appellant has not built the railroads requested by the acts either specifically or impliedly, and the Acts of 1833 and 1835 creating said appellant clearly show

the purpose of the incorporation was for the building of said railroads, and by reason of these material violations of its obligations under said Acts is not entitled to have the State of Georgia comply with the obligations sought to be enforced, and hence has no contract which can or should be enforced and hence is not deprived of any rights under the 14th Amendment to the Constitution of the United States.

(b) The people of the State of Georgia under the Constitution of 1798 of said State, in force at the time of the enactment of the Acts creating appellant, reserved to themselves the sovereign power and under said reservation of sovereignty had full power to enact the Constitution of 1945.

(c) The people of Georgia had still the further power to enact a provision in said Constitution which constituted a withdrawal of any attempted exemption in both this Constitution and that of 1877 because the attempted exemption denied to all the other taxpayers of the State the equal protection of the laws as guaranteed by the 14th Amendment to the Constitution of the United States.

2.

Appellee demurs specially to paragraph 4 and that part of paragraph 5 of protest which refers to the cases of *Wright vs. Georgia Railroad and Banking Company*, 216 U. S. 420, and *State of Georgia vs. Georgia Railroad & Banking Co.*, 54 Ga. 423, and alleges that the judgments rendered therein are res judicata and conclusive on the State of Georgia, and for grounds thereof says:

(a) That the Exhibits "A" and "B" attached to the protest show that in the 1st of the above named

cases the United States Supreme Court affirmed a judgment rendered by Judge Newman of the District Court for the Northern District of Georgia, and the pleadings fail to allege whether the judgment is still of force and binding against the State of Georgia, or whether it has been declared void as against the State of Georgia by the same District Court, and neither does the pleadings allege whether the Supreme Court of Georgia has adjudged said case not res judicata as against the State of Georgia, and in order for this court to know the particulars appellant should be required to so allege.

(b) The record in the said case shows that it was an action against Wright as an individual and not in the official capacity as a State official.

(c) The Supreme Court of the United States in the same case holds that the decision rendered in the second of the above cases is not res judicata.

(d) The second of said cases is not res judicata because judgments relative to taxes for one year are not res judicata as to taxes for years other than the one involved in the litigation.

(e) The Appellee is acting in a dual capacity in the present case, first as the official for the assessing and levying of State taxes, and second as the duly constituted official charged with the duty of assessing or levying the amount of taxes which the municipal and county corporations, through which the railroad of appellant runs, has levied. In the case in the 54th Georgia, set forth above, none of the municipal and county corporations were parties, nor were their right to tax decided, neither was the Comptroller-General acting for them, for at that time although they had

been granted the power to levy ad valorem taxes on all the property within their borders, no machinery for the levying and collecting had been provided by the legislature. In the first of said cases the exhibit of said case shows that none of them were legally before the court, and no judgment involving their rights was rendered.

3.

Appellee demurs specially to that portion of paragraph 5 of the protest which alleges that the case of *Wright v. Georgia Railroad and Banking Company*, 216 U. S. 420, is res judicata against the municipal and county corporations and says that the judgment in that case is void as to, and not binding on any of the municipal and county corporations included in the assessments of appellee, nor is it valid or binding on those counties which intervened in said action because the laws of Georgia at the time did not authorize any counties to be made defendant in such suits, even on their own motion, and did not grant any person the right to suit for declaratory judgment against a county or to obtain by court action a judgment on the question of the right of counties to collect such taxes, the only provision for any such litigation for the determination of the collectibility of such taxes being by affidavit of illegality in the Superior Court, and the only suits which a person could maintain against a county were those specifically provided by statute.

4.

Appellee demurs specially to the remainder of paragraph 5 of the protest and shows that same constitutes no defense to the levying of these taxes and neither do

they show that the State was bound by the litigation in the Wright case described above.

5.

Appellee demurs specially to paragraph 5 of the protest and says that said paragraph as a whole sets forth no defense nor any legal reason why appellant should be exempt from payment of the taxes in question to the State, and no reason why it should be exempt from taxes to the taxing subdivisions.

6.

Appellant demurs specially to paragraph 6 of said protest and to the exhibits "C," "D" and "R," and says that the allegations set forth therein to the effect that certain named Attorneys General and Assistant Attorneys General had ruled that the exemption pleaded was an irrevocable contract. Appellee says that both the paragraph and the said exhibits should be stricken because same constitutes no reason why appellant should be exempted from the payment of the taxes sought to be collected herein, and their opinions relative thereto is not law. It will also be noted that at least one of the opinions, to-wit, B. B. Zellars referred to the Income Tax exemption, and both the Supreme Court of Georgia and the Supreme Court of the United States have overruled him on that opinion and held that this section constituted no income tax exemption.

7.

Appellee demurs specially to paragraph 7 of the protest and says that same should be stricken because it sets forth no legal reason why appellant should be exempted from the payment of said taxes; that the

second, third and fourth sub-paragraphs under this head should be stricken because they are mere conclusions of the pleader without any law upon which to base them, because the general law of 1874, as well as the general laws authorizing counties and other subdivisions to tax, impliedly repeal all laws in conflict.

8.

Appellee demurs specially to paragraph 1 of the protest which claims that Section 15 constitutes a tax exemption for the entire line of railroads of appellant including that branch running from Madison, Georgia, to the principal city of Atlanta, Fulton County, Georgia, a distance of sixty-seven (67) miles, and says that even though said section should apply to all the other branches of said railroad, it would not apply to that portion running from Madison to Atlanta, Georgia.

9.

Appellee demurs specially to paragraph 8 of protest and says that same constitutes no exemption to the taxes due prior to 1945 because the Constitution of 1877 repeals any exemption previously granted by the General Assembly.

10.

Appellee further demurs to paragraph 1 of protest and says that Section 15 should not apply because that portion was built under the provisions of the Act of 1837, and the construction was allowed by the State as a privilege, and so stated in the Act, and no tax exemption was contracted therein. The only wording in said Act which could possibly be construed as in any way approaching the tax exemption was the grant-

ing in said Act of all the immunities in the construction of the railroad as was contained in the previous Acts. The only immunity, in the construction granted in the previous Acts was the immunity from injunction. The authority to build this 67 miles being a mere privilege, the State was authorized to withdraw at will any tax exemption which might have been included therein.

11.

Appellee demurs to the protest as a whole and says that same does not allege whether all of said branches of railroad of said corporation were constructed by a means of stock subscriptions or partly by the earnings of said railroad and by reason of said failure so to allege, this court cannot determine whether all of it was built by the proceeds of the sale of stock.

WHEREFORE, Charles D. Redwine, as State Revenue Commissioner, prays that this demurrer be sustained; that the protest be dismissed and judgment entered holding the Georgia Railroad and Banking Company liable for the taxes assessed.

EUGENE COOK, Attorney General of Georgia
M. H. BLACKSHEAR, JR., Deputy Assistant
Attorney General of Georgia

VICTOR DAVIDSON, Irwinton, Georgia,
Employed as Special Attorney by parties at
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Clarke, McDuffie, Newton, Rockdale,
Walton, DeKalb, Taliaferro and Columbia
Counties.

JOS. G. FAUST, Greensboro, Georgia
Attorney for Morgan, Oglethorpe and

Greene Counties and the City of Greensboro,
Georgia, and Union Point, Georgia.

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Attorney for Warren County

CARLISLE COBB, Athens, Georgia
Attorney for Clarke County

JAMES BARROW, Athens, Georgia
Attorney for City of Athens

J. GLENN STOVALL, Thomson, Georgia
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JULIUS A. McCURDY, Decatur, Georgia
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County Attorney, Madison County and
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OSGOOD O. WILLIAMS, Crawfordville, Ga.
Attorney for Taliaferro County

J. F. HARDIN, Augusta, Georgia
Attorney for Columbia County

W. P. CONGDON, Augusta, Georgia
Attorney for City of Augusta, Georgia
Employed by parties at interest in the
litigation.

NO.

~~IN THE SUPERIOR COURT OF~~
RICHMOND COUNTY, GEORGIA

CHARLES D. REDWINE, as State Revenue
Commissioner, Appellee,

vs.

GEORGIA RAILROAD AND BANKING
COMPANY, Appellant.

On appeal from the assessment and levy of ad valorem
taxes and denial of protest.

PLEA AND ANSWER OF APPELLEE

NOW COMES CHARLES D. REDWINE, as State Revenue Commissioner, the appellee in the above styled case, and in order that the issues involved in the within action may be clarified makes this his response to the allegations of the protest of the Georgia Railroad and Banking Company, and says:

1.

In answer to paragraph 1 of protest, appellee denies appellant's allegations that Section 15 of the Act of 1833 exempts the property herein sought to be taxed from ad valorem taxes.

2.

Appellee denies paragraphs 2 and 3 of the protest.

3.

Appellee admits paragraph 4 of the protest.

4.

Appellee denies paragraph 5 of the protest, as pleaded, and says that the judgment in the case of *Wright v. Georgia Railroad and Banking Company*, 216 U. S. 420, has since its rendition been held by the Supreme Court of Georgia as not res judicata against the State Revenue Commissioner of Georgia in the case of *Musgrove v. Georgia Railroad and Banking Company*, 204 Ga. 39, and has likewise been held not res judicata and not binding on this appellee by the District Court for the Northern District of Georgia in the case of *Georgia Railway and Banking Company v. Redwine*, adjudicated July 9, 1949, a copy of which judgment by a majority of the Court is included in the transcript of record of the case of *Georgia Railroad and Banking Company v. Redwin*, pages 170 to the end of said opinion on page 180, which by reference appellee attaches as his Exhibit "A."

5.

For further plea and answer appellee says that the plea of exemption from taxation of appellant should be denied for the reason that plaintiff is attempting to claim benefits from a charter granted by the State to it without complying with the requirements of the charter and performing the duties placed by said charter on said appellant, and by reason of said failure on the part of appellant to comply it is guilty of a breach of contract which precludes it from demanding any attempted tax exemption set forth in said charter. Appellee shows that the Act of 1832 and the Act of 1835 creating appellant required that appellant should construct a branch of railroad from its main line to Eatonton, Georgia, and likewise required appellant to

construct a line of railroad from Athens to the Tennessee River in the vicinity of Decatur, Alabama; that the construction and operation of these railroads were the main purposes for which appellant was created and granted special privileges. Notwithstanding this, appellant has never constructed either of these lines of railroad.

6.

For further plea and answer appellee says that appellant's prayers should be denied in so far as they apply to that portion of the railroad from Madison, Morgan County, Georgia, to Atlanta, Fulton County, Georgia, a distance of 67 miles, because that portion was built under the provisions of the Act of 1837, same being an amendment to appellant's charter, and the construction of this branch was allowed by the State as a privilege and so stated in the Act, and no tax exemption was contained therein. The only wording in said act which could possibly be construed as in any way approaching the tax exemption was in the granting in said act of all the immunities *in the construction* of the railroad as was contained in the previous Acts. The only immunity *in the construction*, granted in the previous Acts, was an immunity from injunction. The authority to build this 67 miles being a mere privilege, the State was authorized to withdraw at will any tax exemption which might have been included therein. Nearly all the cost of said branch of railroad was paid for with the net earnings of other portions of the railroad for the years 1843, 1844 and 1845 amounting to approximately \$440,000 and a bond issue of \$700,000, which was repaid with net earnings from the railroad and hence this branch should not be exempted.

WHEREFORE, having fully answered, Charles D. Redwine, as State Revenue Commissioner, prays judgment sustaining the assessment.

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M. H. BLACKSHEAR, JR., Deputy Assistant
Attorney General of Georgia

VICTOR DAVIDSON, Irwinton, Georgia
Employed as Special Attorney by parties at
interest, Morgan, Oglethorpe, Greene, War-
ren, Clarke, McDuffie, Newton, Rockdale,
Walton, DeKalb, Taliaferro, and Columbia
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Attorney for City of Augusta, Georgia
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